

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CHARLIE E NELSON
Claimant

APPEAL NO. 09A-UI-02586-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOBALEE INC
Employer

**Original Claim: 01/11/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Charlie Nelson filed an appeal from a representative's decision dated February 16, 2009, reference 01, which denied benefits based upon his separation from Bobalee, Inc. After due notice was issued, a telephone conference hearing was scheduled for and held on March 12, 2009. Mr. Nelson participated personally. The employer participated by Jeff Redding, Herb Besaw, and Larry Painter.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony and having considered the evidence in the record, the administrative law judge finds: The claimant was employed as a machine operator for Bobalee Hydraulics from July 2, 2007, until January 15, 2009, when he was discharged for failing to perform work within company tolerances. Mr. Nelson was employed on a full-time basis and was paid by the hour. His immediate supervisor was Larry Painter.

Mr. Nelson was discharged after the employer determined that he had incorrectly milled eight valve bodies without adhering to required company tolerances, causing the company a loss of approximately \$6,500. The claimant had been warned on two previous occasions for failing to perform his milling duties within company tolerances. Milling machine operators are expected to check each third milled product to ensure that it is within company tolerances. A valve checking gauge is provided to workers to enable them to quickly check tolerances. When the claimant had completed eight valve bodies that were out of tolerance on January 15, 2009, the employer concluded that he was not following production checking requirements and not following the warnings that had been served upon him by the company. Mr. Nelson had demonstrated the ability to adequately perform the duties of his job and had indicated to the company in the past that he believed he was qualified to work without additional training.

It is the claimant's position that the machine that he was assigned to was difficult to operate and that he had requested a transfer off the machine. It is the claimant's further position that the basis for his termination was not made clear to him at the time of termination.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does.

The evidence in the record establishes the claimant had been trained by the company and was aware of the company's reasonable production expectations. When performing his duties as a Max 500 machine operator, the claimant was required to have every third part checked to determine whether the parts were being produced within company tolerances. The claimant had demonstrated the ability to perform his duties in the past and has been warned in the past for failing to adhere to company production requirements.

When the employer determined that Mr. Nelson had milled eight valve bodies that were out of tolerance on January 15, 2009, the employer reasonably concluded that Mr. Nelson was not following the proper tolerance checking requirements to ensure that he performing his milling duties correctly and to avoid losses to the company. As the claimant had previously been specifically warned and his most recent failure to follow company production requirements had caused a substantial loss to the company, a decision was made to terminate Mr. Nelson from his employment.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith

errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated February 16, 2009, reference 01, is affirmed. The claimant is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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